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S. 464

To amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2003

Mr. REID (for himself, Mr. SMITH, Ms. SNOWE, Ms. CANTWELL, Mr. HARKIN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. WYDEN, and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Renewable Energy Incentives Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 **SEC. 2. MODIFICATIONS TO CREDIT FOR ELECTRICITY**
 6 **PRODUCED FROM RENEWABLE RESOURCES**
 7 **AND WASTE PRODUCTS.**

8 (a) INCREASE IN CREDIT RATE.—

9 (1) IN GENERAL.—Section 45(a)(1) is amended
 10 by striking “1.5 cents” and inserting “1.8 cents”.

11 (2) CONFORMING AMENDMENTS.—

12 (A) Section 45(b)(2) is amended by strik-
 13 ing “1.5 cent” and inserting “1.8 cent”.

14 (B) Section 45(d)(2)(B) is amended by in-
 15 serting “(calendar year 2002 in the case of the
 16 1.8 cent amount in subsection (a))” after
 17 “1992”.

18 (b) EXPANSION OF QUALIFIED RESOURCES.—

19 (1) IN GENERAL.—Section 45(c)(1) (relating to
 20 qualified energy resources) is amended by striking
 21 “and” at the end of subparagraph (B), by striking
 22 the period at the end of subparagraph (C) and in-
 23 serting “, and”, and by adding at the end the fol-
 24 lowing:

25 “(D) alternative resources.”.

1 (2) DEFINITION OF ALTERNATIVE RE-
2 SOURCES.—Section 45(c) (relating to definitions) is
3 amended—

4 (A) by redesignating paragraph (3) as
5 paragraph (5),

6 (B) by redesignating paragraph (4) as
7 paragraph (3), and

8 (C) by inserting after paragraph (3), as re-
9 designated by subparagraph (B), the following:
10 “(4) ALTERNATIVE RESOURCES.—

11 “(A) IN GENERAL.—The term ‘alternative
12 resources’ means—

13 “(i) solar,

14 “(ii) open loop biomass,

15 “(iii) geothermal,

16 “(iv) incremental geothermal,

17 “(v) incremental hydropower, and

18 “(vi) landfill gas.

19 “(B) OPEN LOOP BIOMASS.—The term
20 ‘open loop biomass’ means any nonhazardous,
21 cellulosic waste material, which is segregated
22 from other waste materials and derived from—

23 “(i) a forest-related resource, includ-
24 ing mill and harvesting residue,
25 precommercial thinnings, slash, and brush,

1 “(ii) an agricultural source, including
 2 orchard tree crops, vineyards, grain, leg-
 3 umes, sugar, and other crop by-products or
 4 residues, or

5 “(iii) a miscellaneous source, includ-
 6 ing waste pallets, crates, dunnage, and
 7 landscape or right-of-way tree trimmings,
 8 but not including—

9 “(I) municipal solid waste,

10 “(II) recyclable post-consumer
 11 wastepaper,

12 “(III) painted, treated, or pres-
 13 surized wood,

14 “(IV) wood contaminated with
 15 plastic or metals, or

16 “(V) tires.

17 “(C) GEOTHERMAL.—The term ‘geo-
 18 thermal’ means energy derived from a geo-
 19 thermal deposit (within the meaning of section
 20 613(e)(2)).

21 “(D) INCREMENTAL GEOTHERMAL PRO-
 22 Duction.—

23 “(i) IN GENERAL.—The term ‘incre-
 24 mental geothermal production’ means for
 25 any taxable year the excess of—

1 “(I) the total kilowatt hours of
2 electricity produced from a geothermal
3 facility described in paragraph
4 (5)(D)(ii), over

5 “(II) the average annual kilowatt
6 hours produced at such facility for 5
7 of the previous 7 calendar years be-
8 fore the date of the enactment of this
9 subparagraph after eliminating the
10 highest and the lowest kilowatt hour
11 production years in such 7-year pe-
12 riod.

13 “(ii) SPECIAL RULE.—A facility de-
14 scribed in paragraph (5)(D)(ii) which was
15 placed in service at least 7 years before the
16 date of the enactment of this subparagraph
17 shall commencing with the year in which
18 such date of enactment occurs, reduce the
19 amount calculated under clause (i)(II) each
20 year, on a cumulative basis, by the average
21 percentage decrease in the annual kilowatt
22 hour production for the 7-year period de-
23 scribed in clause (i)(II) with such cumu-
24 lative sum not to exceed 30 percent.

1 “(E) INCREMENTAL HYDROPOWER PRO-
2 DUCTION.—

3 “(i) IN GENERAL.—The term ‘incre-
4 mental hydropower production’ means for
5 any taxable year an amount equal to the
6 percentage of total kilowatt hours of elec-
7 tricity produced from a hydropower facility
8 described in paragraph (5)(D)(iii) attrib-
9 utable to efficiency improvements or addi-
10 tions of capacity as determined under
11 clause (ii).

12 “(ii) DETERMINATION OF INCRE-
13 MENTAL HYDROPOWER PRODUCTION.—For
14 purposes of clause (i), incremental hydro-
15 power production for any hydropower facil-
16 ity for any taxable year shall be deter-
17 mined by establishing a percentage of aver-
18 age annual hydropower production at the
19 facility attributable to the efficiency im-
20 provements or additions of capacity using
21 the same water flow information used to
22 determine an historic average annual hy-
23 dropower production baseline for such fa-
24 cility. Such percentage and baseline shall
25 be certified by the Federal Energy Regu-

latory Commission. For purposes of the preceding sentence, the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

“(F) LANDFILL GAS.—The term ‘landfill gas’ means gas generated from the decomposition of any household solid waste, commercial solid waste, and industrial solid waste disposed of in a municipal solid waste landfill unit (as such terms are defined in regulations promulgated under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.).”.

(3) QUALIFIED FACILITY.—Section 45(c)(5) (defining qualified facility), as redesignated by paragraph 2(A), is amended by adding at the end the following:

“(D) ALTERNATIVE RESOURCES FACILITY.—

“(i) IN GENERAL.—In the case of a facility using alternative resources other than incremental geothermal or incremental hydropower to produce electricity,

the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this subparagraph.

“(ii) INCREMENTAL GEOTHERMAL FACILITY.—In the case of a facility using incremental geothermal to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service before such date of enactment, but only to the extent of its incremental geothermal production.

“(iii) INCREMENTAL HYDROPOWER FACILITY.—In the case of a facility using incremental hydropower to produce electricity, the term ‘qualified facility’ means any non-Federal hydroelectric facility owned by the taxpayer which is originally placed in service before the date of the enactment of this subparagraph, but only to the extent of its incremental hydropower production.

“(iv) SPECIAL RULES.—In the case of a qualified facility described in clause (ii) or (iii), the 10-year period referred to in

1 subsection (a) shall be treated as beginning
 2 not earlier than the date of the enactment
 3 of this subparagraph.”.

4 (4) GOVERNMENT-OWNED FACILITY.—Section
 5 45(d)(6) (relating to credit eligibility in the case of
 6 government-owned facilities using poultry waste) is
 7 amended—

8 (A) by inserting “or alternative resources”
 9 after “poultry waste”, and

10 (B) by inserting “OR ALTERNATIVE RE-
 11 SOURCES” after “POULTRY WASTE” in the
 12 heading thereof.

13 (5) QUALIFIED FACILITIES WITH CO-PRODUC-
 14 TION.—Section 45(b) (relating to limitations and ad-
 15 justments) is amended by adding at the end the fol-
 16 lowing:

17 “(4) INCREASED CREDIT FOR CO-PRODUCTION
 18 FACILITIES.—

19 “(A) IN GENERAL.—In the case of a quali-
 20 fied facility described in subparagraph (C)(i) or
 21 (D)(i) of subsection (c)(5) which has a co-pro-
 22 duction facility or a qualified facility described
 23 in subparagraph (A), (B), (C)(ii), (D)(ii), or
 24 (D)(iii) of subsection (c)(5) which adds a co-
 25 production facility after the date of the enact-

1 ment of this paragraph, the amount in effect
 2 under subsection (a)(1) for an eligible taxable
 3 year of a taxpayer shall (after adjustment
 4 under paragraph (2) and before adjustment
 5 under paragraphs (1) and (3)) be increased by
 6 .25 cents.

7 “(B) CO-PRODUCTION FACILITY.—For
 8 purposes of subparagraph (A), the term ‘co-pro-
 9 duction facility’ means a facility which—

10 “(i) enables a qualified facility to
 11 produce heat, mechanical power, chemicals,
 12 liquid fuels, or minerals from qualified en-
 13 ergy resources in addition to electricity,
 14 and

15 “(ii) produces such energy on a con-
 16 tinuous basis.

17 “(C) ELIGIBLE TAXABLE YEAR.—For pur-
 18 poses of subparagraph (A), the term ‘eligible
 19 taxable year’ means any taxable year in which
 20 the amount of gross receipts attributable to the
 21 co-production facility of a qualified facility are
 22 at least 10 percent of the amount of gross re-
 23 cepts attributable to electricity produced by
 24 such facility.”.

1 (6) QUALIFIED FACILITIES LOCATED WITHIN
 2 QUALIFIED INDIAN LANDS.—Section 45(b) (relating
 3 to limitations and adjustments), as amended by
 4 paragraph (5), is amended by adding at the end the
 5 following:

6 “(5) INCREASED CREDIT FOR QUALIFIED FA-
 7 CILITY LOCATED WITHIN QUALIFIED INDIAN
 8 LAND.—In the case of a qualified facility described
 9 in subsection (c)(5)(D) which—

10 “(A) is located within—

11 “(i) qualified Indian lands (as defined
 12 in section 7871(c)(3)), or

13 “(ii) lands which are held in trust by
 14 a Native Corporation (as defined in section
 15 3(m) of the Alaska Native Claims Settle-
 16 ment Act (43 U.S.C. 1602(m)) for Alaska
 17 Natives, and

18 “(B) is operated with the explicit written
 19 approval of the Indian tribal government or Na-
 20 tive Corporation (as so defined) having jurisdic-
 21 tion over such lands,

22 the amount in effect under subsection (a)(1) for a
 23 taxable year shall (after adjustment under para-
 24 graphs (2) and (4) and before adjustment under
 25 paragraphs (1) and (3)) be increased by .25 cents.”.

1 (7) CONFORMING AMENDMENTS.—

2 (A) The heading for section 45 is amended
3 by inserting “**AND WASTE PRODUCTS**” after
4 “**RESOURCES**”.

5 (B) The item relating to section 45 in the
6 table of sections subpart D of part IV of sub-
7 chapter A of chapter 1 is amended by inserting
8 “and waste products” after “resources”.

9 (c) ADDITIONAL MODIFICATIONS OF RENEWABLE
10 RESOURCES AND WASTE PRODUCTS CREDIT.—

11 (1) TREATMENT OF PERSONS NOT ABLE TO
12 USE ENTIRE CREDIT.—

13 (A) IN GENERAL.—Section 45(d) (relating
14 to additional definitions and special rules) is
15 amended by adding at the end the following
16 new paragraph:

17 “(8) TREATMENT OF PERSONS NOT ABLE TO
18 USE ENTIRE CREDIT.—

19 “(A) ALLOWANCE OF CREDIT.—

20 “(i) IN GENERAL.—Except as other-
21 wise provided in this subsection—

22 “(I) any credit allowable under
23 subsection (a) with respect to a quali-
24 fied facility owned by a person de-
25 scribed in clause (ii) may be trans-

ferred or used as provided in this paragraph, and

“(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

“(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

“(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

“(II) an organization described in section 1381(a)(2)(C),

“(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

“(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

“(V) any Indian tribal government (within the meaning of section

1 7871) or any agency or instrumen-
2 tality thereof.

3 “(B) TRANSFER OF CREDIT.—

4 “(i) IN GENERAL.—A person de-
5 scribed in subparagraph (A)(ii) may trans-
6 fer any credit to which subparagraph
7 (A)(i) applies through an assignment to
8 any other person not described in subpara-
9 graph (A)(ii). Such transfer may be re-
10 voked only with the consent of the Sec-
11 retary.

12 “(ii) REGULATIONS.—The Secretary
13 shall prescribe such regulations as nec-
14 essary to ensure that any credit described
15 in clause (i) is claimed once and not reas-
16 signed by such other person.

17 “(iii) TRANSFER PROCEEDS TREATED
18 AS ARISING FROM ESSENTIAL GOVERN-
19 MENT FUNCTION.—Any proceeds derived
20 by a person described in subclause (III),
21 (IV), or (V) of subparagraph (A)(ii) from
22 the transfer of any credit under clause (i)
23 shall be treated as arising from the exer-
24 cise of an essential government function.

“(C) CREDIT NOT INCOME.—Any transfer under subparagraph (B) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

“(D) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.”.

(B) CREDITS NOT REDUCED BY TAX-EXEMPT BONDS OR CERTAIN OTHER SUBSIDIES.—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(i) by striking clause (ii),

(ii) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(iii) by inserting “(other than any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Renewable Energy Incentives Act, or proceeds of an issue of State or local government obliga-

tions the interest on which is exempt from tax under section 103)” after “project” in clause (ii) (as so redesignated), and

(iv) by striking “TAX-EXEMPT BONDS,” in the heading and inserting “CERTAIN”.

(2) COORDINATION WITH OTHER CREDITS.—

Section 45(d), as amended by paragraph (1)(A), is amended by adding at the end the following:

“(9) COORDINATION WITH OTHER CREDITS.—

This section shall not apply to any qualified facility with respect to which a credit under any other section is allowed for the taxable year unless the taxpayer elects to waive the application of such credit to such facility.”.

(3) CREDIT ALLOWABLE AGAINST REGULAR AND PORTION OF MINIMUM TAX.—

(A) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following:

“(4) SPECIAL RULES FOR RENEWABLE ELECTRICITY PRODUCTION CREDIT.—

“(A) IN GENERAL.—In the case of the renewable electricity production credit—

“(i) this section and section 39 shall be applied separately with respect to the credit, and

“(ii) for purposes of applying paragraph (1) to such credit—

“(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the renewable electricity production credit).

“(B) RENEWABLE ELECTRICITY PRODUCTION CREDIT.—For purposes of this subsection, the term ‘renewable electricity production credit’ means the credit allowable under subsection (a) by reason of section 45(a).”.

(B) CONFORMING AMENDMENTS.—

(i) Subclause (II) of section 38(c)(2)(A)(ii) of such Code is amended by

1 inserting “or the renewable electricity pro-
 2 duction credit” after “employee credit”.

3 (ii) Subclause (II) of section
 4 38(c)(3)(A)(ii) of such Code is amended by
 5 inserting “or the renewable electricity pro-
 6 duction credit” after “employee credit”.

7 (4) EXPANSION TO INCLUDE ANIMAL WASTE.—
 8 Section 45 (relating to electricity produced from cer-
 9 tain renewable resources), as amended by para-
 10 graphs (2) and (4) of subsection (b), is amended—

11 (A) by striking “poultry” each place it ap-
 12 pears in subsection (c)(1)(C) and subsection
 13 (d)(6) and inserting “animal”,

14 (B) by striking “POULTRY” in the heading
 15 of paragraph (6) of subsection (d) and inserting
 16 “ANIMAL”,

17 (C) by striking paragraph (3) of subsection
 18 (c) and inserting the following:

19 “(3) ANIMAL WASTE.—The term ‘animal waste’
 20 means manure and litter and other animal wastes,
 21 including—

22 “(A) wood shavings, straw, rice hulls, and
 23 other bedding material for the disposition of
 24 manure, and

“(B) byproducts, packaging, and other materials which are nontoxic and biodegradable and are associated with the processing, feeding, selling, transporting, and disposal of such animal wastes.”, and

(D) by striking subparagraph (C) of subsection (c)(5) and inserting the following:

“(C) ANIMAL WASTE FACILITY.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of a facility using animal waste (other than poultry) to produce electricity, the term ‘qualified facility’ means any facility of the taxpayer which is originally placed in service after the date of the enactment of this clause.

“(ii) POULTRY WASTE.—In the case of a facility using animal waste relating to poultry to produce electricity, the term ‘qualified facility’ means any facility of the taxpayer which is originally placed in service after December 31, 1999.”.

(5) TREATMENT OF QUALIFIED FACILITIES NOT IN COMPLIANCE WITH POLLUTION LAWS.—Section 45(c)(5) (relating to qualified facilities), as amended

1 by paragraphs (2) and (3) of subsection (b), is
 2 amended by adding at the end the following:

3 “(E) NONCOMPLIANCE WITH POLLUTION
 4 LAWS.—For purposes of this paragraph, a facil-
 5 ity which is not in compliance with the applica-
 6 ble State and Federal pollution prevention, con-
 7 trol, and permit requirements for any period of
 8 time shall not be considered to be a qualified
 9 facility during such period.”.

10 (6) PERMANENT EXTENSION OF QUALIFIED FA-
 11 CILITY DATES.—Section 45(c)(5) (relating to quali-
 12 fied facility), as redesignated by subsection
 13 (b)(2)(A), is amended by striking “, and before Jan-
 14 uary 1, 2004” in subparagraphs (A) and (B).

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to electricity and other energy sold
 17 after the date of the enactment of this Act.

○